

7.13 (17A,455A) Separation of functions and ex parte communications.

7.13(1) *Separation of functions.* A compliance officer of the department shall perform the investigative and prosecuting functions for the department. Additional employees of the department may be designated by the director to perform these functions as necessary during the course of the case. No person performing these functions shall participate or advise in any decision arising out of that case except as witness or counsel in public proceedings.

All employees of the department other than those performing the investigative and prosecuting functions in the case shall be available to advise the agency and presiding officer on any of their functions relating to the case and any appeal.

7.13(2) *Communications initiated by administrative law judge or agency member.*

a. Except as provided in 7.13(2)"b" and "c," after commencement the presiding officer and members of the agency having jurisdiction of the case shall not communicate, directly or indirectly, in connection with any issue of fact or law in that case with any person or party.

b. The presiding officer or members of the agency having jurisdiction of the case may so communicate upon notice and opportunity for all parties to participate. Notice of the time and place of the discussion and the issues of fact or law to be discussed shall be delivered by first-class mail to the parties. The discussion shall not extend to issues of fact or law not specified in the notice unless all parties participate in the discussion. The time of the discussion shall not be sooner than ten days after receipt of the notice.

c. The presiding officer or members of the agency having jurisdiction of the case may communicate with members of the department and may have the aid and advice of persons other than those with a personal interest in either the case under consideration or a pending factually related case involving the same parties.

7.13(3) *Communications initiated by parties.*

a. Parties, including the department or their representatives in a case, shall not communicate directly or indirectly in connection with any issue of fact or law in that case with the presiding officer or members of the agency having jurisdiction of the case.

b. Subrule 7.13(3), paragraph "a," shall not apply if the requirements of 7.13(2)"b" are satisfied.

c. The presiding officer or members of the agency should refuse to discuss issues of fact or law with parties unless notice and opportunity for hearing by first-class mail, a copy of any written communication or summary of oral communication received from a party directly or indirectly related with any issue of fact or law in the case to the other parties and shall include the written communication or summary in the record.

d. The presiding officer may require the recipient of a prohibited communication to submit the communication if written or a summary of the communication if oral for inclusion in the record of the proceedings.

e. The presiding officer may, as sanctions for violations, make a decision against a party who violates the rules; make a recommendation that the agency censure, suspend or revoke a privilege to practice before the agency; recommend that the director censure agency personnel.

Description: EPA approved a new chapter "Rules of Practice in Contested Cases." This chapter governs procedures in contested cases generally including appeals of administrative orders, appeals of license or permit conditions, license or permit denials or suspensions. This chapter was approved in conjunction with Title V rules.

[illegible]

None.